"The construction which we are to-day placing upon this section is, in my opinion a construction which we ought to arrive at by applying the ordinary canons of construction. The rule that, where there are general words following particular and specific words all of one genus, the general words are presumed to be restricted to the same genus as the particular words, is a familiar rule of construction. In my judgment, that familiar rule is based upon a principle which applies to the section now before us. In this section there is a specific proposition followed by the general words "or otherwise". Now it seems to me that, just as where there are general words following particular words, the general words are presumed to be restricted to the same genus as the particular words; so where there is a specific proposition followed by general words, the general words ought to be presumed, unless there are some words which lead to a contrary conclusion, to be restricted to the matter that is covered by the specific proposition. The fact is that general words in a section of this sort can hardly avoid being ancillary in their nature. When one looks at a clause like this it is quite plain that the words "or otherwise" are ancillary to the specific proposition which precedes them, and it seems to me that where there are ancillary words of that sort it is a sound and wholesome rule not to give such a construction to the ancillary words as will wipe out or do away with the specific proposition with which the clause commences."

I think the most reasonable construction to be given to regulation 3(v)(ii) is that the law does not intend that no colouring matter whatsoever should be added to tea. I would construe that the words "other matter" appearing in regulation 3(v)(ii) should be restricted to any matter which is either harmful or deleterious to the human body. I therefore, confirm the order of the Magistrate that the defendant be acquitted and discharged.

*Order accordingly.*

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## PUBLIC PROSECUTOR v. NEOH WAN KEE

**[O. Cr. J. (Edgar Joseph Jr. J.) March 14, 15, 19 to 22 & April 21, 1984]**

**[Penang – Criminal Trial No. 2 of 1982]**

*Criminal Law and Procedure – Trafficking in dangerous drugs – Use of agent provocateur – Prima facie case – Evidence of accused – Statements to police after arrest not admissible – No doubts cast on prosecution case – Evaluation of evidence of prosecution witnesses and of accused – Sentence – Dangerous Drugs Act, 1952, s.37, 39 & 40A*

*Dangerous Drugs – Trafficking – Use of agent provocateur – No doubts cast on prosecution case – Death sentence – Dangerous Drugs Act 1952, ss. 37, 39 & 40A.*

*Evidence – Trafficking in dangerous drugs – Use of agent provocateur – No doubts cast on prosecution case.*

In this case the accused was charged with trafficking in dangerous drugs. The evidence showed that the accused agreed to sell the dangerous drug to a prosecution witness, who acted as *agent provocateur.* A trap was laid and the accused was arrested.

Held: (1) in this case the prosecution had, on the evidence as a whole, both oral and otherwise, established the charge of trafficking in dangerous drugs against the accused beyond all reasonable doubt, even without the aid of the presumptions contained in section 37 of the Dangerous Drugs Act, 1952. With the aid of the presumptions, the case for the prosecution was overwhelming;

(2) there were no extenuating circumstances of any trial to justify the court showing mercy and the accused was sentenced to death.

[*Editorial Note:* The appeal against the above decision in Federal Court Criminal Appeal No. 25 of 1984 was dismissed and the sentence was confirmed.]

*Cases referred to:*

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.
(2) *Muniandy & Ors.* v. *Public Prosecutor* [1966] 1 M.L.J. 257.
(3) *Sambu* v. *Rex* [1947] M.L.J. 16.
(4) *Tan Shu En* v. *Public Prosecutor* [1948] M.L.J. 196.
(5) *Tara Singh* v. *Public Prosecutor* [1949] M.L.J. 88.
(6) *Tengku Mahmood* v. *Public Prosecutor* [1974] 1 M.L.J. 110.
(7) *Chang Liang Sang & Ors.* v. *Public Prosecutor* [1982] 2 M.L.J. 231.
(8) *Public Prosecutor* v. *Tan Gong Wai & Anor.* [1985] 1 M.L.J. 355.
(9) *Public Prosecutor* v. *Lim Teik Seng & Ors.* Penang High Court Criminal Trial No. 9 of 1979.

CRIMINAL TRIAL.

*Mohamed Bazain bin Idris* (Deputy Public Prosecutor for the prosecution.

*R. Rajasingam* for the accused.

*Cur. Adv. Vult.*

**Edgar Joseph Jr. J.**: This accused was prosecuted before me upon a single count of trafficking in dangerous drugs, to wit, 170.3 grammes of heroin, in contravention of s.39B(1)(a) of the *Dangerous Drugs Act, 1952* (Revised 1980) ("the Act"). Specifically, the charge was expressed in the following terms:

"That you, Neoh Wan Kee @ Neoh Guan Kee (m), on October 15, 1981, at about 4.25 p.m. at Jalan Tun Syed Sheh Barakhbah, in the District of Georgetown, in the State of Penang, did on your own behalf traffic in danger-

ous drugs, to wit, 170.3 grammes of heroin, in contravention of section 39B(1)(a) of the *Dangerous Drugs Act, 1952,* (Revised 1980), and that you have thereby committed an offence punishable under section 39B(2) of the same Act."

According to the prosecution, one Mr. David Richardson (P.W.2), who had been engaged in criminal investigation work for the United States Government for the last eighteen years and was, at all material times, attached to the Drug Enforcement Administration, Cincinati, Ohio, came to Penang in October, 1981, on a temporary duty assignment.

On arrival in Penang, he spent much time in Penang Street and Chulia Street where he was asked by several persons if he was interested in purchasing drugs, to which he replied in the affirmative, adding that he was interested in purchasing heroin and, if there were to be further discussions, he would be available in the Merlin Coffee House. As a result, he was there approached by a male Indian who introduced himself as Mohamed and, who enquired, if he was interested in purchasing ganja, to which query P.W.2 replied that he was interested in purchasing heroin. Mohamed then said that he knew somebody who might be able to help. P.W.2's response to this was that if he could locate somebody who could provide large quantities of heroin he should call P.W.2. To enable this to be done, P.W.2 gave Mohamed his residential telephone number. This was on or about October 6, 1981.

On October 7, 1981 P.W.2 received a telphone call from Mohamed telling him that a meeting had been arranged for October 8, 1981 at 4.00 p.m. at the Paramount Hotel, Penang, with a person who would be the source of the heroin. Understandably, Mohamed did not give that person's name.

Accordingly, on October 8, 1981 at 4.00 p.m., P.W.2 kept his appointment at the Paramount Hotel and, five minutes later, the accused made his appearance, introducing himself as Ah Seng. Also present was Mohamed who had comè earlier. The accused spoke to Mohamed, partly in English and partly in some other language. He spoke to P.W.2 in broken English. The accused told P.W.2 that he was capable of "making heroin" and P.W.2's interpretation of this was that he was a chemist.

It was put to P.W.2 in cross-examination that the accused did not speak in English, broken or otherwise, but P.W.2 maintained that the accused did speak in English, though this was broken. It was also put to P.W.2 that the male Chinese he met at the Paramount Hotel was not the accused but a person called Tan Kam Seng but again P.W.2 maintained that it was the accused and that he had introduced himself as 'Ah Seng'.

To resume P.W.2's narrative of the events at the Paramount Hotel, after the usual introductions, the accused asked P.W.2 if he was interested in purchasing heroin. P.W.2 replied he was, whereupon the accused inquired as to the amount of heroin required to which P.W.2 replied "approximately ten pounds." The accused then said the price would be $12,000/- (Ringgit) per pound. P.W.2 enquired when the heroin would be available, adding that it would be several days before the money would be in hand and that he would have to leave Penang to get it. All the major terms of the proposed purchase were fixed at this meeting and Mohamed was to be paid his commission out of the proceeds of sale. Before the meeting broke up it was agreed that the accused would receive a telephone call as to what was to happen next.

On October 12, 1981 in the morning, P.W.2 did receive a telephone call, not from the accused but from Mohamed proposing another meeting for further negotiations with the accused on October, 14, 1981 this time at the Sri Pantai Motel. Later, the same day, P.W.2 passed on information on the telephone to one Mr. Balbir Singh (P.W.1), an officer of the Anti-Narcotics Department, Bukit Aman, informing him of what had transpired between him and the accused and enquiring if he was interested in further information, to which he replied he was and would come to Penang and meet P.W.2. Still later that day, in the evening, they did meet at P.W.2's house in Hillside Area in Penang. There they discussed details of the investigation. P.W.2 also informed P.W.1 that there would be another meeting to determine the time and place of delivery. They both agreed that P.W.2 would be provided with $120,000/- in cash which he would display to the accused.

Accordingly, on October 14, 1981 at about 4.30 p.m., P.W.1 did give P.W.2 $120,000/- in cash at the latter's residence and it was agreed between them that P.W.1 and his officers would follow P.W.2 to the proposed rendezvous at the Sri Pantai Motel at Tanjong Tokong the same day at 6.00 p.m.

So, at the appointed time, P.W.2 left in a taxi for Sri Pantai Motel with P.W.1 and his officers following in another car.

On arrival there, P.W.2 entered the coffee house of the Motel and took a seat at a corner table. He was joined immediately by Mohamed. Five minutes later, the accused arrived and joined both of them at the same table and then a conversation ensued. The accused said he was ready to sell ten pounds of heroin but insisted on payment before delivery. P.W.2 disagreed, adding that he would purchase one pound before giving him the rest of the money. The accused agreed. The accused also said he would be ready to deliver the following day. Before the meeting broke up, P.W.2 displayed the $120,000/- cash to the accused by opening his gym bag which contained the money. No place for delivery had been agreed and the accused said he would contact P.W.2 shortly. P.W.2 then returned to his residence where he met officers of the Anti-Narcotics Department and returned the $120,000/- to them at the same time advising them as to what had transpired in the coffee-house. They agreed to meet again the following day at P.W.2's residence some time in the morning.

The following day, that is to say, October 15, 1981 P.W.2 received a message on the telephone from Mohamed saying that the meeting with the accused would take place that day at the Poshni Restaurant at 4.00 p.m. P.W.2 wasted no time in passing this message on to officers of the Anti-Narcotics Department at a meeting at his residence later that day. He was also instructed of the plan he should follow if he should observe any drugs and provided with what appeared to be a large wad of currency notes, but in reality a wad of pieces of paper neatly cut and cunningly arranged, with two genuine notes, one at each end. It was agreed that P.W.2 should proceed to Poshni Restaurant at 4.00 p.m. and there meet the accused. If he observed any drugs he was to give a pre-arranged signal by lighting and smoking a cigarette.

Accordingly, at the appointed time, P.W.2 proceeded to Poshni Restaurant and took a seat at a table. Approximately five minutes later, the accused arrived and joined P.W.2. The accused told P.W.2 that he had one pound of heroin which was located in a car several blocks away and that P.W.2 should accompany him to the car. P.W.2 disagreed and, instead, suggested meeting the accused at the Esplanade where the transaction could be completed. The accused agreed. Both then left the restaurant at 4.30 p.m. P.W.2 then walked to the Esplanade and, as he did so, he noticed Anti-Narcotics Officers following. These officers had just before been lying in wait outside the Poshni Restaurant in a van and keeping observation. Two of them, namely, A.S.P. Balbir Singh (P.W.1) and Insp. Khalid bin Abu Bakar (P.W.3), confirmed that it was the accused they saw a little earlier enter the Poshni Restaurant and the former said that he also saw the accused leave it, a few minutes later.

As he approached the water side of the Esplanade, P.W.2 observed a white car proceeding slowly along the road with the accused at the wheel. There was no one else in the car. At this point, P.W.2 was walking along the road, namely, Jalan Tun Syed Shed Barakhbah. When they were sufficiently close to each other, P.W.2 motioned to the accused to stop, which he did. P.W.2 then entered the vehicle and sat beside the accused, leaving his door more than slightly ajar. The accused then took out a packet from the glove compartment, unwrapped it and handed it to P.W.2. The packet, which was made of plastic, had a newspaper wrapping and contained a brownish granular substance, being exhibit P3. P.W.2 took a small portion of the substance, placing it in a small vial of acid. The result was positive indicating presence of an opiate. P.W.2 then resealed the packet, rewrapped it and replaced it in the glove compartment. He then asked the accused whether the other nine pounds of heroin were available, to which the accused replied that the other nine pounds were available and would be ready by midnight. The accused said that he had got the drugs from Butterworth. The accused also said that he was capable of making heroin. He said all this in broken English. At this point, P.W.2 noticed officers of the Anti-Narcotics Department in close proximity to the car and he then gave the pre-arranged signal by lighting a cigarette, leaving the car abruptly and then, soon afterwards, leaving the area as well.

P.W.2 was shown the packet and the newspaper, being exhibits P3 and P4, in Court and he said they appeared to be the same as those the accused had taken out of the glove compartment and handed to him that day.

Insp. Khalid bin Abu Bakar (P.W.3), one of P.W.1's officers then closed in on the accused and made the arrest. He walked up to the driver's side of the car while his colleague, Insp. Zainuddin, walked to its near side. P.W.3 identified himself and, at the same time, switched off the engine and pulled out the ignition key. He then conducted a search of the inside of the car and, in the glove compartment, he found the packet wrapped in Chinese newspaper. On opening the package, he found the plastic packet containing a granular

substance which he believed to be heroin (P2). He then handcuffed the accused and proceeded to Police Headquarters, Penang.

Evidence was also led by the prosecution to prove that the contents of P3 were heroin, a dangerous drug within the meaning of S.2 of the Act. In particular, the Chemist's Report stated:

"I examined and analysed the contents of the plastic packet and found 444.8 grammes of a light brown substance containing 170.3 grammes of heroin.

Heroin is a "dangerous drug" as defined in Section 2 of the Dangerous Drugs Act, 1952."

Although he did not specifically mention the First Schedule to the Act under which heroin is classified, I was of the opinion that it was sufficient for the Chemist to say, as he did, that heroin was a dangerous drug within the meaning of s.2 of the Act.

Upon the above facts, I ruled there was a case to answer and I declined to hear submissions of no case to answer, applying the principles enunciated in *Haw Tua Tau* v. *Public Prosecutor*[1].

The accused elected to give evidence on oath and, in a nutshell, his defence was a complete denial and that the case against him had been framed.

I now refer to his evidence in detail. He said he was a contractor for carpentry work and was residing for a number of years until his arrest at 19, Hutton Lane, Penang. He said his nickname was Poh Sai and that he did not have a nickname Ah Seng as alleged by P.W.2 though he had a friend named Ah Seng.

Casting his mind back, he said he remembered the events of October 14, 1981 and traced his movements that afternoon. At about 2.30 p.m. and onwards that day, he said he was at the It Ban Kok Club, 19, Hutton Lane, reading newspapers, having earlier finished his work. Between 3.00 and 4.00 p.m. his friend Ah Seng arrived to gamble and they played mahjong there. At about 4.00 p.m., Ah Seng took him on a motorcycle to look for someone. They went to a motel behind a swimming club in Tanjong Tokong. On arrival there, Ah Seng pulled up at the car park and instructed him to go to the coffee-house of the motel to look for a tall Indian. Obediently the accused went in. There he noticed an Indian seated with a European at a table. Both were total strangers to him. When he turned to come out the Indian called to him in Hokkien. So the accused went up to him. The Indian then asked him whether it was he who was sent by Ah Seng. The accused then asked him if his name was Mohamed because earlier he had been told by Ah Seng that the Indian's name was Mohamed. He got a reply in the affirmative and was invited to have a drink. So he sat with the Indian and the European for two or three minutes but declined the offer of a drink. During this time, the Indian and the European engaged in a conversation which he did not understand. The accused then told Mohamed that it would be better if he went out and called Ah Seng and accordingly did so.

The accused told Ah Seng, who was still seated on his stationary motorcycle and waiting in the car park outside, that the Indian was calling for him. Ah Seng's reply was that the accused should wait outside while he (Ah Seng) went in to talk to Mohamed. The accused again obediently took a seat at a table near the seaside in the compound of the motel. Half an hour later, Ah Seng emerged with Mohamed and the European. They appeared to be engaged in conversation. Then Ah Seng left them and walked up to his motorcycle, telling the accused "Let's go". Together they proceeded to Hutton Lane where the accused lived. Ah Seng dropped the accused there and left.

The accused explained that he had known Ah Seng for two to three weeks prior to the incident, that he had done work for him for a few days. Besides that, Ah Seng was also a contractor and used to frequent the Club in Hutton Lane.

He then turned to the events of October 15, 1981. That day he said he was at the Club. He explained that he was not only a member but he also lived there. At about 2.15 to 2.20 p.m., Ah Seng telephoned him saying he needed a car to look for someone. It was then about to rain. Ah Seng asked if he could help to get a car on loan, saying that he would wait for the accused at home at 3.45 p.m. that day. Without further ado, the accused said that if he could get a car he would go to his house. So, at about 3.45 p.m., the accused looked up a friend, one Tok Loong Teik (P.W.4), for the loan of a car for a short while. He explained to P.W.4 that a friend needed a car to look for someone and added that this friend needed the car because it was threatening to rain. P.W.4 agreed and handed him the car keys.

The accused then drove the car to Ah Seng's

house in Argyll Road. On arrival there, the accused called out Ah Seng's name while seated in the driver's seat and Ah Seng emerged carrying something in his right hand. He promptly got into the car and sat next to the accused who asked him where they were headed for. Ah Seng then told the accused to take him to a street between Ho Peng Cafe and Pathe Hotel. This was apparently King Street. On arrival there, Ah Seng asked the accused to pull up, which he did. Ah Seng then asked the accused to enter a coffe-house in a corner shop, asking him to look for the same Indian and if the accused should see him to tell him that Ah Seng was waiting for him in a car outside. Once again, obediently, the accused went into the coffee-house and, on entering, saw the same Indian and European seated together at a table. He identified P.W.2 as the European. The accused duly conveyed Ah Seng's message and the Indian told the accused to tell Ah Seng to go to the appointed place. This the accused duly did, whereupon Ah Seng instructed the accused to drive into the old Esplanade. The accused did so.

On arrival at the water front, Ah Seng saw P.W.2 and instructed the accused to pull up beside him. P.W.2 was then standing on the road, on the sea side as opposed to the land side. The accused did so. Ah Seng then alighted and stood by the side of the car. P.W.2 then walked up to Ah Seng. They engaged in conversation in English. After a short while, P.W.2 sat in the front passenger's seat but with the door ajar and both his feet resting on the road. Ah Seng then reached for the glove compartment and took out a packet to show to P.W.2. P.W.2 took the packet from Ah Seng, opened it and examined it, then he wrapped it up again and replaced it in the glove box. After that, P.W.2. alighted from the car and talked to Ah Seng, both of them standing beside the door. As they were talking they walked towards the rear of the car. They walked away fast towards the rear of the car. At this point of time, the accused said he saw two men running towards him coming from the front portion of the car. One came up to his side and the other stood at the front passenger's side. They both identified themselves as Government men. The man who was near the front passenger seat made a search of the front portion of the car and recovered a package from the glove box. They told him that the package belonged to him but he denied this. He said that he made no attempt to escape although he saw the two officers rush towards the car, adding that he did not know that Ah Seng was dealing in drugs.

I now turn to evaluate the evidence of the accused.

It goes without saying that if I believe the testimony of P.W.2, then, the defence must necessarily fail, for, on that version, it was clear there was affirmative evidence that the accused was engaged in a drug trafficking transaction on that date and at the time in question. There was also, upon that testimony, more than sufficient evidence to attract the presumption of trafficking under section 37(d) & (da) of the Act by reason of the possession of the offending exhibit, P4. I was entirely satisfied that the testimony of P.W.2 and that of members of the ambush party was that of witnesses of truth.

P.W.2 was undoubtedly an *agent provocateur* but the testimony of such a witness is not to be presumed unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under section 39B if the attempt to abet or the abetment was for the sole purpose of securing evidence against such person, as was the case here: section 40A of the Act.

Lengthy and searching cross-examination of the key prosecution witnesses merely served to emphasise the truthfulness of their testimony. I do not however give this fact undue weight, for, as H.T. Ong, F.J. said in *Muniandy & Ors.* v. *Public Prosecutor*[2], the fact of being unshaken and unbroken in cross-examination is not *per se* an all-sufficient acid test of credibility and that the inherent probability or improbability of a fact in issue must be the prime consideration. It is with these principles in mind that I evaluated the evidence in this case.

In fact, the gist of the defence of the accused appears to be that he was a mere cypher or an innocent tool in the hands of his friend, Ah Seng, that from beginning to end, he was, so to speak, led by the nose. It is impossible to give the slightest credence to this ridiculous explanation. Would Ah Seng who was engaged, as the defence claimed, in this drug transaction, be prepared to run the risk of detection and possible arrest by enlisting the aid of an innocent agent who may eventually be a prime witness for the prosecution? Common sense will supply the answer to that question. It was suggested by counsel for the defence that, perhaps, Tan Kam Seng used the accused as a stooge so that in the event of an arrest he could turn round and put the blame on him. I find this argument, which

is really a mere theory, too far-fetched and totally unacceptable.

I also find that Ah Seng is a mere figment of the accused's imagination.

The accused also testified in chief that when the police party pounced on him at the Esplanade they told him that the package (P3) belonged to him whereupon he denied this and told them it belonged to Ah Seng. At this stage, he claimed Ah Seng was out of sight but P.W.2 was within sight. He also claimed that he told them that he could take them in his car to look for Ah Seng who had just run away. He further claimed that he told them that Ah Seng and the European (referring to P.W.2) were involved in the drug transaction. In spite of this, he was told to keep quiet.

All this evidence, as I have said, emerged in examination-in-chief and when during submissions I pointed out to the counsel for the defence that none of these matters were put to the prosecution witnesses, he first argued that it was unnecessary to do so and then, when I enquired whether he considered these alleged statements by the accused (apparently made after arrest) admissible, bearing in mind that the prosecution had failed to lead any evidence that the accused had been cautioned, he then changed his stance to suit the shifting circumstances and, perhaps understandably, argued that as the statements were inadmissible there was no need to put them to the prosecution witnesses. I mention all this to show that the defence in this case, so far as this part of the case was concerned, did not seem to know where it was going and had lost all sense of poise and direction.

I wish to make it clear, however, that I do not consider that any alleged statements made by the accused at the Esplanade would be admissible in evidence, since he was technically under arrest in the sense that he had just been pounced upon following a trap and every effort had been made to prevent his escape: see the cases of *Sambu* v. *Rex*[3] and *Tan Shu Eng* v. *Public Prosecutor*[4]. In the circumstances, as no evidence was led as to any caution having been administered before any alleged statements were made by the accused, evidence as to such statements if led by the defence, would be inadmissible: see proviso (b) to section 37(1) of the Act. I therefore did not attach any importance to the failure on the part of the defence to put the alleged statements made by the accused at the Esplanade to the prosecution witnesses concerned.

On the accused's version, he seems to have done a great deal as a sort of an errand boy for Tan Kam Seng. The question arises what was he getting for his trouble? From his evidence, it would appear nothing, and this again I find totally unacceptable. I have tried to analyse the defence case with the utmost care in order to see whether or not there was some element of probability in it and having done so, as sympathetically as I can, I must say that I find it totally unacceptable. It is fundamental that it is not for the defence to prove anything and that all that is required of it is to tender an explanation that is reasonable and probable and which casts a doubt either as to the truth of the prosecution case or as to the guilt of the accused. However, a mere fanciful or imaginary doubt which can be dismissed with the remark: "Of course that is possible but not in the least probable" will not suffice. Applying this test, I have arrived at the inevitable conclusion that the explanation given by the accused did not meet these requirements. On the other hand, I am entirely satisified, upon the evidence as a whole, both oral and otherwise, that the prosecution has established the charge of trafficking in dangerous drugs against the accused beyond all reasonable doubt, within the meaning of section 2 even without the aid of the presumptions contained in section 37 subsections (d) and (da) of the Act. With the aid of the presumptions, the case for the prosecution was absolutely overwhelming.

In arriving at the above conclusion, I relied upon the impression made upon me by P.W.2 and members of the raiding party while giving evidence and the evidence of the surrounding circumstances. I was wholly satisfied, having seen them give their evidence, and having observed their demeanour, especially under cross-examination and having tested it against the totality of the evidence in accordance with *Tara Singh* v. *Public Prosecutor*[5] and *Tengku Mahmood* v. *Public Prosecutor*[6], that they were witnesses of truth. On the other hand, for the reasons already stated, I was wholly satisfied that on all essential points the accused was not only lying but not very clever at telling lies. Nor, I might add, did I find the testimony of D.W.2 or D.W. 3 of any real assistance to his case, in view of my evaluation of the testimony of P.W.2. Clearly, the requisite knowledge of broken English on the part of the accused to have discussed with P.W.2 the proposed drug deal must have been less than meagre.

I accordingly find the accused guilty as charged and I enter conviction.

I am now prepared to hear submissions as regards sentence. [*After hearing submissions on sentence*]

I was satisfied that there were no extenuating circumstances of any kind to justify my showing mercy: see *Chang Liang Sang & Ors.* v. *Public Prosecutor*[7].

As I said in *Public Prosecutor* v. *Tan Gong Wai & Anor.*[8]:

"The quantity of drugs may not be large but was certainly not small. In any event, in my opinion, the quantity of drugs can only be an element in assessing sentence but, by no means, a decisive consideration. Again, the use of agents provocateurs in cases such as this is not only not unlawful but specifically authorised under the Act. This is understandable in view of the notorious difficulty of getting evidence in such cases. ..."

I would also repeat what I said in *Public Prosecutor* v. *Lim Teik Seng & Ors.*[9], namely,

"It would be superfluous to emphasize that the drug problem in this country has now reached epidemic proportions and one of the only ways of checking it is to make it plain to all those concerned in the drug world that if and when a conviction is secured for an offence of trafficking in hard drugs, the Law will, in the absence of extenuating circumstances, be enforced with the utmost rigour. These remarks are now academic since in all trials for drug trafficking in the High Court in respect of offences committed on or after the coming into force of the recent amendments, once a conviction is secured, the Judge has no option but to pass the sentence of death."

It was for the above reasons that I sentence the accused to death.

*Sentenced accordingly.*

Solicitors: *R. Rajasingam & Co.*

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## FLORENCE BAILES v. DR. NG JIT LEONG

**[O.C.J. (Ajaib Singh J.) July 20, 1984]**

**[Penang – Civil Suit No. 209 of 1981]**

*Societies – Unincorporated Club – Alleged derogatory remarks by plaintiff against another lady associate – Complaint – Suspension of plaintiff by Club committee – Whether principles of natural justice applicable – Jurisdiction – Bias – Insufficient particulars in agenda – Declaration – Injunction & damages.*

The plaintiff was a lady associate of the Penang Club by virtue of being the wife of an ordinary member and she had to pay a monthly subscription of $2 under the Club rules. The incident that sparked off this action took place in 1981 in the games room of the Club, where the plaintiff, as alleged by Madam Teoh, another lady associate, had made derogatory remarks about Madam Teoh in the presence and hearing of several persons. Madam Teoh reported this incident to the Club president and also sent him a letter written by a member of the Club committee, one Mr. Stone with whom she was then living. One Mr. Ong, a committee member and disciplinary convenor of the Club, investigated the complaint. He formed and took statements from the people excluding the plaintiff, who were in the games room when the alleged remarks were made. Ong took the stand that the committee was entitled to take action against the plaintiff without hearing her in defence. Finally in a committee meeting, it was decided that she should be suspended for three months.

The plaintiff then sued the defendant on his own behalf and on behalf of all the other members of the Club committee for a declaration that her suspension was null and void and for an injunction, damages and costs. The main issue concerns the question whether the principles of natural justice should be observed in the circumstances.

**Held:** (1) the principles of natural justice must be observed in exercising a power of expulsion or suspension unless it plainly appears on a true construction of the Club rules that the power was intended to be absolute and unfettered either by express exclusion of these principles or by necessary implication. It is a fair and reasonable expectation of any member that he would not be subjected to disciplinary proceedings and punished without the principles of natural justice being applied in the proceedings;

(2) the jurisdiction of the court to determine questions of law cannot be ousted by any club rules. The duty on the part of the committee to observe the principles of natural justice in exercising its powers under rule 5(i) must be implied and given effect;

(3) there was a real likelihood of bias on the part of a member of the committee concerned, namely, Mr. Stone because of his close relationship with Madam Teoh;

(4) the failure to give sufficient particulars in the agenda for the discussion of the plaintiffs's conduct rendered the unanimous decision of the committee invalid;

(5) in the circumstances, the decision to suspend the plaintiff was null and void and of no effect. For the embarrassment, distress and humiliation suffered by the plaintiff, she was awarded $10,000.00 for damages and costs.